

1 OFFICE OF THE ATTORNEY GENERAL

2 DEPARTMENT OF LAW

3 Civil Division

4 (New Administrative Regulation)

5 40 KAR 8:010 Nonparticipating Manufacturer Quarterly Escrow Deposit and
6 Certification.

7 RELATES TO: KRS 131.600 – 131.630.

8 STATUTORY AUTHORITY: KRS 131.620(2).

9 NECESSITY, FUNCTION, AND CONFORMITY: To promote compliance with
10 KRS 131.602, the Attorney General may require nonparticipating tobacco
11 manufacturers to quarterly certify their compliance with Kentucky's Nonparticipating
12 Tobacco Manufacturers Act. The Attorney General may also require nonparticipating
13 manufacturers to make the escrow payments required by KRS 131.602 in quarterly
14 installments.

15 Section 1. Criteria for Quarterly Escrow Deposits. The Attorney General may
16 require quarterly escrow deposits and certifications of nonparticipating manufacturers
17 who meet any of the following criteria:

18 (1) No Previous Escrow Deposit. Nonparticipating manufacturers that have
19 not previously established and funded a qualified escrow fund in Kentucky;

20 (2) No Escrow Deposit for More Than One Year. Nonparticipating
21 manufacturers that have not made any escrow deposits for more than one year;

(3) Untimely or Incomplete Deposits. Nonparticipating manufacturers that have failed to make a timely and complete escrow deposit for any prior calendar year;

(4) Outstanding Judgments. Nonparticipating manufacturers that have failed to pay any judgment, including any civil penalty;

(5) Large Sales Volume. Nonparticipating manufacturers that have more than 2,500,000 of their cigarettes sold in Kentucky during a quarter; and

(6) Other Reasonable Cause. In addition to the reasons specified above, the Attorney General may require quarterly escrow deposits from a non-participating manufacturer if the Attorney General has reasonable cause to believe the nonparticipating manufacturer may not make its full required escrow deposit by April 15 of the year following the year in which the cigarette sales were made.

Section 2. Deadline for Quarterly Escrow Deposits. Nonparticipating manufacturers who are required to make quarterly escrow deposits must do so no later than thirty (30) days after the end of the quarter in which the sales are made. For example, the deadline for making a quarterly escrow deposit for cigarette sales that occurred during the first quarter of the year (Jan.-Mar.) is April 30 of the same year.

Section 3. Deadline for Submitting Quarterly Certification and Notice to Attorney General. Nonparticipating manufacturers who are required to make quarterly escrow deposits must provide the Attorney General with their quarterly certifications and official notification of the quarterly escrow deposit no later than ten (10) days after the deadline for which an escrow deposit is required. For example, the deadline for certifying and officially notifying the Attorney General of a quarterly escrow deposit for

sales of cigarettes that occurred during the first quarter of the year (Jan.-Mar.) is May 10 of the same year.

Section 4. Quarterly Periods Defined. For purposes of this section, the calendar year shall be divided into the following quarters: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

Section 5. Notice to Nonparticipating Manufacturers. Any nonparticipating manufacturer required to make quarterly escrow deposits and to certify its compliance with this rule shall be notified of those requirements by first class mail sent to its last known address.

Section 6. Decertification. If the required quarterly escrow deposit is not timely made in full, or the required quarterly certification is not provided to the Attorney General, or the Attorney General does not receive timely official notice of the quarterly escrow deposit, the nonparticipating manufacturer and its brand families may be decertified and removed from Kentucky's Directory of Tobacco Products Approved for Sale in Kentucky.

August 27, 2004

GREGORY D. STUMBO
ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #80 KAR 8:010

Contact person: Michael Plumley, Office of the Attorney General.

(1) Provide a brief summary of:

(a) What this administrative regulation does:

The proposed administrative regulation provides for quarterly payment and certification of escrow deposits made by certain nonparticipating tobacco product manufactures under KRS 131.602.

(b) The necessity of this administrative regulation:

The proposed regulation implements HB 97 of 2004 authorizing the Office of the Attorney General to promulgate regulations requiring quarterly escrow deposits. This will reduce the time a noncomplying company may sell from one year to one quarter.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

The Attorney General is authorized by its enabling statutes to adopt regulations to facilitate performing duties and exercising authority. KRS §15.180.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

These rules will protect against companies that may not comply with escrow requirements and enhance enforcement of the escrow statute.

(2) If this is an amendment to an existing administration regulation:

(a) How the amendment will change this existing administrative regulation:

Not applicable.

(b) The necessity of the amendment to this administrative regulation:

Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes:

Not applicable.

(d) How the amendment will assist in the effective administration of the statutes:

Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Approximately ten (10) companies each year.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment:

Manufacturers will deposit quarterly rather than annually in some situations.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: \$1,000.00

(b) On a continuing basis: \$1,000.00 annually.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation:

Attorney General budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment:

No.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

No.

(9) Tiering: Is tiering applied:

Tiering was not applied. The regulation will be applied to all nonparticipating tobacco manufacturers equally.